United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
Interior Board of Land Appeals
4015 Wilson Boulevard
Arlington, Virginia 22203

IN REPLY REFER TO:

CERTIFIED

OCT 24 2001

IBLA 2001-389, et al.	:	CA-610-01-02
	:	
RICHARD BLINCOE, ET AL.	:	Grazing
	:	
v.	:	Petitions for Stay Granted;
	:	Case Files Referred to
BUREAU OF LAND MANAGEMENT	:	Hearings Division

ORDER

Richard Blincoe, permittee of the Valley Wells Allotment, Mark and Mike Blair, permittees of the Lazy Daisy Allotment, and Ron Kemper, permittee of the Horsethief Springs Allotment, have filed notices of appeal and petitions for stay of the final grazing decisions issued by the Needles Field Office, Bureau of Land Management (BLM), on September 7, 2001. The Board docketed the petitions for stay as IBLA 2001-389 through IBLA 2001-391, respectively. Dave Fisher, permittee of the Ord Mountain Allotment, Tom and Jeanne Wetterman, permittees of the Cronese Lake and Cady Mountain Allotments, Cathy Smith, permittee of the Harper Lake Allotment, and William Mitchell, permittee of the Rattlesnake Canyon Allotment have filed notices of appeal and petitions for stay of the final grazing decisions issued by the Barstow Field Office, BLM, on September 7, 2001. The Board docketed the petitions for stay as IBLA 2001-392 through IBLA 2001-394, and IBLA 2001-407, respectively. Also, the County of San Bernardino (County) has filed appeals and petitions for stay of each of the above decisions. The Board has docketed the County's petitions for stay as IBLA 2001-395 and IBLA 2002-17 through IBLA 2002-22, respectively.

Each decision, effective immediately, modifies the terms and conditions of grazing permits covering one or more allotments in the California Desert Conservation Area (CDCA), modifies the way livestock use the allotments to protect the desert tortoise and its habitat, establishes the period for the modification, and sets parameters for livestock use. Each decision excludes cattle from grazing on designated portions of the allotments from March 1 to June 15 and from September 7 to November 7. Moreover, each decision provides that if during the seasonal exclusion periods cattle are found in the exclusion areas, the affected permittee shall have 48 hours after notification from BLM to remove them, and if they are not removed, a trespass action will be initiated according to 43 CFR 4150.2(a)(b).

The September 7, 2001, decisions mirrored, in content and effect, prior grazing decisions issued by BLM on May 15, 2001. The May 15 grazing decisions were issued to all of the above-named permittees, including one to Dave Thornton, transferee applicant for the Valley Wells Allotment from Blincoe. The temporary modifications imposed by the grazing decisions had

been analyzed by BLM as part of the Proposed Action in Environmental Assessment (EA) No. CA-610-01-02, signed on behalf of the California Desert District Manager on April 9, 2001, and in a subsequent Decision Record for that EA issued on May 15, 2001. The Decision Record approved the Proposed Action.

The EA and Decision Record, upon which the decisions were based, were prepared pursuant to negotiated settlement agreements in Center for Biological Diversity v. Bureau of Land Management, No. C 00-00927 WHA (N.D.Ca. Mar. 16, 2000). 1/ The third settlement agreement (Stipulation 3), provided for the seasonal exclusion of cattle from a portion of public lands identified as desert tortoise habitat within each of 11 grazing allotments, including the ones at issue, from March 1 to June 15, and from September 7 to November 7. Stipulation 3 specifies the acreage of desert tortoise habitat to be included in each exclusion, but not the precise location. Because cattle remained in the seasonal exclusion areas beyond March 1, 2001, the Center filed in March 2001 a motion with the Federal District Court to find BLM in contempt of court. To resolve the matter, Ann R. Klee, Counselor to Secretary Gail E. Norton, submitted a plan for bringing BLM into compliance with the settlement agreements. That plan contemplated issuance of final grazing decisions to implement the livestock grazing terms of the settlement agreements. 2/

The above-named grazing permittees filed appeals from the May 15, 2001, grazing decisions. In accordance with the plan submitted to the Court by Ms. Klee, by memorandum dated June 15, 2001, Secretary Norton assumed jurisdiction of these appeals and assigned them to Administrative Law Judge Harvey C. Sweitzer for the rendering of a final, written decision on her behalf, including the authority to decide any request for a stay filed pursuant to 43 CFR 4.21. She directed Judge Sweitzer to issue his decision by August 24, 2001, declaring that his decision would constitute final agency action.

Upon conducting a 13-day hearing, Judge Sweitzer issued his 103-page opinion on August 24, 2001, which by the terms of Secretary Norton's June 15, 2001, memorandum is final for the Department. Judge Sweitzer reached the following conclusions:

1/ The history of the Center For Biological Diversity litigation and how it led to the current appeals is more fully described in Administrative Law Judge Harvey C. Sweitzer's decision at pages 10 through 19.
2/ The grazing decisions, which BLM issued on May 15, 2001, would temporarily modify the terms and conditions of the affected grazing permits until BLM completes "formal consultation" pursuant to section 7 of the Endangered Species Act (ESA), 16 U.S.C. § 1536(a)(2)(1998), regarding the effects of the CDCA Plan of 1980, as amended, on various endangered and threatened species, including the desert tortoise, and until BLM implements the terms and conditions of a Biological Opinion pursuant to the "formal consultation."

> (1) The EA and Decision Record are legally sufficient under NEPA [National Environmental Policy Act];
> (2) The final grazing decisions are not arbitrary and capricious, are not an abuse of discretion, are supported upon a rational basis, and are otherwise in accordance with the law, except as provided in conclusion (4) below;
> (3) The final grazing decisions are consistent with section 7 of the ESA [Endangered Species Act]; and
> (4) BLM complied with the grazing regulations when it issued the final grazing decisions, except that BLM failed to comply with the requirement of consultation, cooperation, and coordination with the affected permittees and therefore the final grazing decisions are hereby set aside and the matters remanded to BLM for further action consistent with this Decision.

(ALJ Decision at 103).

On September 7, 2001, BLM issued the decisions on remand which are at issue in this proceeding. This Board's jurisdiction is limited to whether the petitions for stay of the September 7 decisions, filed by the appellants, should be granted or denied. See 43 CFR 4160.4; 43 CFR 4.21. Under the relevant appeal regulation, "[a]ny person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge." 43 CFR 4160.4. A period of 30 days from receipt of the final decision is allowed for filing a notice of appeal and petition for stay of the decision pending a final determination on appeal. 43 CFR 4160.3(c). Stay petitions are governed by the regulations at 43 CFR 4.21. A stay petition shall be granted or denied by the relevant appeals board, i.e., the Board of Land Appeals. 43 CFR 4.21(b)(4). Thus, the extent of this Board's analysis is confined to whether the petitions for stay of BLM's September 7 decisions should be granted or denied.

The standards for adjudicating a petition for stay mandate consideration of the relative harm to the parties if the stay is granted or denied, the likelihood that appellants will prevail on the merits, the likelihood of immediate and irreparable harm if the stay is not granted, and whether granting the stay is in the public interest. 43 CFR 4.21(b). These factors have long been recognized and applied by the Courts, e.g., Placid Oil Co. v. United States Department of the Interior, 491 F. Supp. 895 (N.D. Tex. 1980), and this Board, e.g., Marathon Oil Co., 90 IBLA 236, 93 I.D. 6 (1986). Appellants requesting a stay have the burden of proof to demonstrate that a stay should be granted. 43 CFR 4.21(b)(2).

In its "Opposition to Petitions for Stay" (Opposition), BLM contends that "Appellants raise exactly the same arguments raised in the original proceeding heard by Judge Sweitzer," and that "the only issue to be addressed in this appeal, and the only issues upon which Appellants may request a stay, relate to CCC [consultation, cooperation, and coodination], and imminent danger to tortoise and its habitat from continued grazing."

(Opposition at 4). BLM states that the arguments offered by appellants in support of their petitions for stay were addressed at the hearing and decided by Judge Sweitzer in his August 24, 2001, decision. BLM asserts that the only issue "appropriate for discussion in these current appeals is the issue of CCC, whether the BLM's additional efforts constitute reasonable CCC, and whether the BLM was justified in issuing immediately effective grazing decisions." Id. at 6. BLM states that as to the other issues raised by appellants, "Judge Sweitzer has ruled, and his decision is final for the Department." Id. at 3-4.

Given that Secretary Norton declared that Judge Sweitzer's decisions would constitute final agency action, and given that he ruled, as discussed fully below, that BLM's issuance of the May 15, 2001, decisions complied with applicable statutes and regulations, except for the CCC requirement, we agree that the issue on appeal is whether BLM complied, prior to the issuance of the September 7 decisions, with the requirement of CCC. See 43 CFR 4110.3-3, 4130.3-3, and 4100.0-5. The merits of the appeals filed by the permittees and the County are pending before Judge Sweitzer, who will determine whether BLM complied with the CCC requirement. Our review is limited to whether appellants have satisfied the standards for a stay set forth at 43 CFR 4.21.

We will proceed with a review of Judge Sweitzer's opinion as it relates to BLM's failure to engage in meaningful CCC in developing and issuing its May 15, 2001, decisions. As Judge Sweitzer notes, the grazing regulations require BLM to engage in CCC with the affected permittee or lessee prior to issuance of a proposed decision. See 43 CFR 4110.3-3, 4130.3-3. "Consultation, cooperation, and coordination means interaction for the purpose of obtaining advice, or exchanging opinions on issues, plans, or management action." 43 CFR 4110.0-5.

Judge Sweitzer makes clear that under the regulations BLM was obligated to provide the grazing permittees the opportunity to participate in developing the EA upon which the May 15 decisions were based:

> Each of the Appellants, except for Mr. Thornton, testified that BLM did not provide him or her with the opportunity to assist in developing alternatives in the EA, and most also stated that BLM never asked for, nor solicited his or her opinions, suggestions, concerns, comments, or involvement in any manner. * * * Mr. Thornton testified that he was asked to suggest alternatives, that he suggested a different grazing scheme (which he did not identify in his testimony), and that BLM personnel did not seriously consider it but merely responded that it couldn't be done (Tr. 520-21).
>
> BLM's own evidence shows that its contacts with the affected permittees prior to issuance of the proposed decisions were limited. Bernice McProud, the Rangeland Management Specialist for the Needles Field Office, whose responsibilities

> included consultation with Appellants, handled most of the communications for that office.
>
> Prior to issuance of the proposed decisions she had no discussions with Appellants regarding the economic impacts of the Proposed Action on their cattle operations, such as the costs likely to be incurred, or the ability of Appellants to assimilate their operations to the proposed changes and keep them viable (Tr. 3061, 3063). Rather, she simply spelled out generally the changes being contemplated (Tr. 3063).

(ALJ Decision at 97-98).

Judge Sweitzer proceeds to catalog the several telephone calls Ms. McProud made to certain of the permittees, including Ron Kemper, lessee for the Horsethief Springs Allotment, Mike Blair, lessee for the Lazy Daisy Allotment, Richard Blincoe, permittee for the Valley Wells Allotment, as well as her efforts, both successful and unsuccessful, to meet with them. Id. at 98-99. He also describes the "numerous contacts and discussions" Molly Brady, the Needles Field Office Manager, had with Ron Kemper, lessee for the Horsethief Springs Allotment, and with Dave Thornton, the transfer applicant for the Valley Wells Allotment. Id. at 98. In addition, in response to Dave Thornton's request, Molly Brady, Gary Sharpe, and Ms. McProud met with him to discuss, inter alia, the Center's lawsuit and how it would affect the Valley Wells Allotment. Id.

As to the Barstow Field Office's efforts to communicate with the permittees, Judge Sweitzer stated:

> Communications between the Barstow Field Office personnel and Appellants within its jurisdiction were even more limited. The BLM Rangeland Management Specialist for the Barstow Field Office, Anthony Chavez, had minimal contact with the permittees prior to issuance of the proposed decisions. He acknowledged that he had no discussions with Appellants regarding the economic impacts of the Proposed Action on their cattle operations, the EA alternatives, the acreage or location of the seasonal exclusion areas, the seasonal exclusion periods, or the caps on grazing use (Tr. 2866, 2869, 2881, 2895, 2939).

(ALJ Decision at 99).

Again, Judge Sweitzer describes numerous communications, attempted and actual, between BLM personnel and the permittees, including several phone conversations between Mr. Chavez and Cathey Smith, messages Mr. Chavez left with William Mitchell and several phone conversations with his fiancee, Julie Austin. He further describes the evidence as to the following communications: District Manager Tim Salt's invitation to Karen Budd-Falen, after a Federal Court hearing on January 26, 2001, to propose

alternatives at the proposed decision stage, and his impression that Appellants were not interested in discussing or pursuing alternatives (Tr. 1759-61); Mr. Salt's offer to Ron Kemper, upon issuance of the proposed decisions, that he and other lessees offer alternatives to the specific terms of the settlement agreement, and Mr. Kemper's statement that the permittees had no intention to offer alternatives and that they would settle the matter in court (Ex. DT1); the telephone conversation initiated by Mr. Kemper, in which he declined an offer from Mr. Morgan, the Rangeland Management Specialist, to work with BLM to create alternative exclusion area boundaries for the Horseshoe Springs Allotment. (Decision at 100-01).

Despite the communications between BLM personnel and the permittees or their attorney outlined above, Judge Sweitzer's review of the evidence led him to conclude that the efforts fell far short of compliance with the CCC requirement:

> In summary, the preponderance of the evidence shows that BLM did not comply, or even substantially comply, with its duty to consult, coordinate, and cooperate with the Appellants, except with respect to Mr. Thornton. BLM personnel had only limited contact with the Appellants prior to the proposed decision and the substance of those contacts fails to indicate that BLM "interact[ed] for the purpose of obtaining evidence, or exchanging opinions on issues, plans, or management action." 43 CFR § 4100.0-5. With two exceptions, there is little or no evidence that BLM personnel sought the Appellants' advice or exchanged opinions. Rather, they merely informed some of the Appellants as to what was happening or going to happen, or as to the opportunity to provide input after the decisions were issued.
>
> The two exceptions are the contacts with Mr. Thornton and Mr. Kemper. While the communications with Mr. Kemper were more substantial than with most of the Appellants, they did not amount to serious exchanges of advice and opinions. Mr. Kemper twice rebuffed invitations to offer alternatives, but there is no evidence that these rebuffs were communicated to Ms. McProud, who was responsible for consulting with him. When Ms. McProud was told by Mr. Morgan of Mr. Kemper's dissatisfaction with the exclusion area boundaries, she did not attempt to contact him regarding his dissatisfaction. A good faith effort to consult requires more.

(Decision at 101; emphasis in original).

Having concluded that BLM personnel had failed to adequately consult with the permittees pursuant to 43 CFR 4100.0-5, Judge Sweitzer then addressed the question of "what relief, if any, is appropriate for the failure to consult in light of * * * Board precedents." (Decision at 102). He then reviewed the Board's decisions in Rudnick v. Bureau of Land Management, 93 IBLA 89 (1988), and John L. Falen, 149 IBLA 347 (1999).

In Rudnick v. BLM, supra, Marcus Rudnick appealed BLM's failure to follow the regulatory requirement to issue a proposed decision and allow for a 15-day protest period prior to issuance of a final decision awarding a grazing lease to John Bidart. Rudnick held the previous expiring lease and Bidart owned lands contiguous to the lease. BLM concluded that appellant did not have priority for the new lease, even though he held the expiring lease. Rudnick argued that BLM's failure to allow a 15-day protest period denied him the opportunity to comply with the regulatory requirement of control of contiguous lands under 43 CFR 4160.1-1. This Board agreed with Administrative Law Judge Kendall Clark that BLM's failure to provide the 15-day protest period rendered the decision voidable, but that "unless some reason can be advanced to void a voidable decision, it will be upheld." 93 IBLA at 96. Because Rudnick failed to obtain an adjacent private lease until over two months after BLM's decision, the Board agreed that the procedural error was not prejudicial and that a remand would serve no purpose. Id.

In John L. Falen, supra, which Judge Sweitzer found to be "more similar to the present case," the Board held, inter alia, that BLM failed to consult with a grazing permittee with regard to placement and design of a fence prior to issuing a decision assigning fence maintenance responsibilities to the permittee. The Board agreed with the permittee that the decision requiring the permittee to maintain the fence had been imposed without either coordination or consultation with Falen, despite the provisions of 43 CFR 4120.3-2, 4120.3-4, or 4130.6-3. The Board stated that "[t]here has been no showing that circumstances precluded consultation and coordination, before construction, with the permittee concerning the Washburn Creek fence, when, in other cases such as the Crowley Creek fence, that coordination was effected with the permittee." 149 IBLA at 353. Thus, the Board ruled that BLM's assignment of responsibility for maintaining the fence "without consultation or coordination with Appellant, and the 1996 decision of the Administrative Law Judge affirming that assignment, was improper." Id. Accordingly, the Board set aside the ALJ's decision and remanded the matter to BLM for consideration of the proper placement and design of the fence after consultation with Appellant.

Judge Sweitzer found the present case "troubling because Appellants have presented no direct evidence, such as suggested alternative locations for the seasonal exclusion areas, to show that a remand would serve a useful purpose," as the Board had found in John L. Falen, supra. (Decision at 102). He noted, "[o]n the other hand, the facts are not as they were in Rudnick, where there was no possibility of a different outcome." Id. Further, he recognized that because the permittees were not allowed to intervene in the Center for Biological Diversity litigation, "they were effectively foreclosed from the negotiating process by which the actions in the stipulations were formulated," and "that the opportunity for subsequent participation in defining the actions to be taken was very limited, as a practical matter, because of the need to renegotiate most refinements or alternatives." Id. at 103.

Judge Sweitzer stated:

> A final consideration tips the balance in favor of remanding this matter to BLM. That consideration is the importance the Board has placed upon a grazier's or other public land user's participation in the act of defining the Federal action being proposed and in the act of gathering the best available data. See, e.g., Blake v. BLM, 145 IBLA 154, 164-66 (1998).

(ALJ Decision at 103, footnote omitted). Judge Sweitzer enunciated the standard by which BLM's efforts to consult and coordinate with the permittees herein must be evaluated: "Appellants should be afforded a real opportunity to contribute information and shape the actions to be taken for the mutual benefit of all parties and the affected resources." (ALJ Decision at 103). As to whether the appellants were afforded such a real opportunity is a matter of sharp debate between the parties to this matter.

On August 31, 2001, BLM sent a letter to each of the permittees, as well as the County, inviting them to "participate in a consultation, cooperation, and coordination workshop regarding implementation of the court-approved Settlement Stipulations at issue in this matter." (Aug. 31, 2001, Letters). The workshop was scheduled for September 6-7, 2001. BLM stated that the purpose of the workshop was to seek appellants' "advice and exchange views on relevant issues and proposed management actions relevant" to the final grazing decisions. BLM advised that after fulfilling the requirements for CCC, "it is the BLM's intent to issue revised grazing decisions." Id. The workshop was to include all the permittees and the County, as well as members of the interested public.

Appellants complain that they were "never given an opportunity to meet with BLM individually or with the affected permittees in a time convenient to [their] schedule." (Petitions for Stay at 7-8). 3/ "Rather," appellants assert, "the BLM simply requested [their] presence at the workshop on September 6 & 7, 2001." Id. They maintain that it is clear that the BLM intended to engage in CCC "with members of the interested public regardless of whether or not [appellants were] able to attend the meeting personally, or able to provide written comments prior to the meeting." They argue that because they received less than one week's notice of the workshop, they were not given an adequate opportunity to attend. They state that they were "never afforded a real opportunity to contribute information or shape any future actions concerning management of the public lands." Id. at 9. They conclude that because they were unable to attend the workshop on such short notice, they were not afforded any reasonable opportunity for CCC. Appellants emphasize that despite the total

3/ Since the petitions for stay are basically identical regarding the argument that BLM failed to meet the CCC requirement, and the quoted material appears generally on the same pages of each of the petitions, cites to such material will be to "Petitions for Stay."

lack of CCC with them, BLM issued its decisions on September 7, effective immediately. They complain that the final grazing decisions require them to immediately comply with the BLM's original May 15, 2001, decision, and immediately remove their livestock from the seasonal exclusion areas in the allotments.

In response, BLM, through counsel, contends that its efforts at CCC with appellants were reasonable in light of the "importance of the fall closure (beginning September 7) to desert tortoise as documented at the recent hearing," and because of the evidence that "continued grazing posed an immediate threat of significant damage to the tortoise and its habitat." (Opposition at 2). BLM continues:

> As such, the Bureau was required to undertake consultation, or a reasonable attempt at consultation, with the permittees and others prior to issuance of immediately effective grazing decisions. The Bureau invited each Appellant, and counsel, as well as the County (an intervenor in the previous hearings), to a CCC workshop to be held on September 6, and 7, 2001, in Barstow, California (Attachments 2-13). For reasons not fully explained, none of the Appellants attended the workshop (Attachment 14, 15). None of the Appellants participated in a conference call offered to Appellants through their counsel, nor did any Appellant submit any written documentation evidencing their concerns with the restrictions identified in the May 15, 2001, final grazing decisions. Because of the importance of the seasonal closure beginning September 7 to the desert tortoise, the Bureau issued final grazing decisions, effective immediately on September 7, 2001, to each Appellant/allottee.

Id. at 2-3.

BLM disagrees with appellants' contention that it failed to comply with the grazing regulations respecting CCC. BLM states that it afforded the appellants and the County the opportunity to meet with BLM, or to submit written documentation to BLM in advance of the issuance of the September 7 grazing decisions. In flat contradiction to appellants' assertion that BLM failed to contact the permittees individually, BLM states that it "contacted each and every permittee, at least once, and in many instances, several times," as evidenced by the additional CCC described in the individual decisions, "and through counsel, contacted Appellants counsel (Attachments 12, 13) in attempts to schedule CCC." Id. at 7. In summary, BLM states that "[n]one of the Appellants submitted documentation, nor did they attend the meetings, nor did they participate in a conference call. This was based upon their choice, and not upon the lack of availability of the BLM." Id.

BLM emphasizes that the September 7 decisions were issued pursuant to 43 CFR 4110-.3-3(b), as opposed to section 4110.3-3(a). Subsection (a) relates to the issuance of proposed grazing decisions followed by final

grazing decisions, as was the situation with the final decisions issued by BLM on May 15, 2001. However, BLM notes, because "subsection (b) relates to situations where action must be taken quickly," the requirement for CCC "differs between the subsections." Subsection (b) provides:

> When the authorized officer determines that * * * continued grazing use poses an imminent likelihood of significant resource damage, after consultation with, or a reasonable attempt to consult with affected permittees or lessees, the interested public, and the State * * * the authorized officer shall close allotments or portions of allotments to grazing * * * or modify authorized grazing use notwithstanding the provisions of paragraph (a) of this section. Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.21.

43 CFR 4110.3-3(b) (emphasis added by BLM).

BLM maintains that "the importance of the fall closure," which begins on September 7 in accordance with the Court approved Stipulation 3, "necessitated the issuance of immediately effective grazing decisions." (Opposition at 7). BLM claims that it made a reasonable attempt to meet with all permittees (and the County) prior to the fall deadline, and that none of the avenues of attempted consultation were pursued. As to the argument that the appellants had "insufficient time to prepare for CCC," BLM responds that "these are the same permittees (and County) that participated in the previous hearing and there raised the same arguments." Id. at 8.

In evaluating the petitions for stay, we agree with counsel for BLM that "the only issues upon which Appellants may request a stay, relate to CCC, and imminent damage to tortoise and its habitat from continued grazing." (Opposition at 4). Again, in remanding the May 15, 2001, decisions to BLM, Judge Sweitzer contemplated that BLM would afford the permittees a "real opportunity to contribute information and shape the actions to be taken for the mutual benefit of all parties and the affected resources." (Decision at 103).

We have considered the competing arguments as to whether the permittees have met their burden of proof that the stays should be granted under 43 CFR 4.21(b). We are mindful that the history of these cases, including the fact that the series of settlement agreements reached during the Citizens for Biological Diversity litigation, particularly Stipulation 3, dictates the course of BLM's action to a great degree. However, we are also cognizant, as was Judge Sweitzer, of the importance placed upon CCC by

this Department. Whether BLM's September 7 decisions were issued following meaningful CCC is at the heart of this dispute.

Based upon our review of the record, particularly the conflicting arguments outlined above, we cannot determine whether BLM afforded appellants a real opportunity to contribute information and shape the actions leading to the issuance of the September 7 decisions. Since Judge Sweitzer is required to conduct a hearing to resolve the appeals over which he has jurisdiction, i.e., to determine whether BLM met the CCC requirement, we deem it appropriate to grant the petitions for stay pending his ruling on the merits of whether BLM afforded permittees the "real opportunity" to participate which he contemplated.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petitions for stay are granted pending Judge Sweitzer's ruling on the merits of whether BLM complied with his decision and applicable law, as discussed herein, in its CCC efforts.

James F. Roberts
Administrative Judge

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